

REMARKS

In response to the June 27, 2007 Office Action, please amend the Application identified above as follows and as set forth in the foregoing Listing of Claims:

Amend Claim 3 to include the limitations that the insect repellent is non-insecticidal and is to be applied directly to human skin. Support for the limitation that the insect repellent is non-insecticidal is found in the Specification, in the Detailed Description of the Invention, on page 6, line 14 (“The invention is not, however, an insecticide.”). Addition of this limitation does not add new matter and is therefore proper. Support for the limitation that the insect repellent is to be applied directly to human skin is found in the Specification, in the Detailed Description of the Invention, on page 6, line 4 (“This invention is a liquid insect repellent intended to be applied directly to human skin”); *see also* Specification, Background of the Invention – Description of Prior Art, page 1, line 36; Specification, Summary of the Invention, page 5, line 38. Addition of this limitation does not add new matter and is therefore proper.

Further amend Claim 3 to substitute “consisting of” for “comprising” in reference to the blend of five active ingredients. This limitation makes clear that there are five and only five active ingredients plus one or more inactive ingredients, rather than at least the five identified active ingredients plus the inactive ingredients. Support for this limitation is found throughout the Specification. Addition of this limitation does not add new matter and is therefore proper.

Further amend Claim 3 to delete “further comprising” in reference to the one or more inactive ingredients. This amendment is for clarity and adds no new matter.

Amend Claim 4 to include the limitation that the insect repellent is non-insecticidal. Support for this limitation is found in the Specification, in the Detailed Description of the

Invention, on page 6, line 14 (“The invention is not, however, an insecticide.”). Addition of this limitation does not add new matter and is therefore proper.

Further amend Claim 4 to substitute “consisting of” for “comprising” in reference to the blend of five active ingredients. This limitation makes clear that there are five and only five active ingredients plus one or more inactive ingredients, rather than at least the five identified active ingredients plus the inactive ingredients. Support for this limitation is found throughout the Specification. Addition of this limitation does not add new matter and is therefore proper.

Further amend Claim 4 to delete “further comprising” in reference to the one or more inactive ingredients. This amendment is for clarity and adds no new matter.

Amend Claim 7 to substitute “consist of” for “are” in reference to composition of the inactive ingredients. This amendment makes clear that the inactive ingredients are soybean oil and wheat germ oil and nothing else. Support for this limitation is found throughout the Specification. Addition of this limitation does not add new matter and is therefore proper.

Add new Claims 16 through 19. Claims 16 through 19 are identical to Claims 12 through 15, respectively, except that the phrase “consisting of” is substituted for “comprising” in each of the new claims. This limitation requires that the proportions described in the claims constitute the entirety of ingredients, and that no other unnamed ingredients may be present in Claims 16 through 19. Support for this limitation is found throughout the Specification. Addition of the four new claims having this limitation does not add new matter and is therefore proper.

Claims 3, 4, and 7, as amended, remain in the case; Claims 6, 8, 9, 10, 11, 12, 13, 14, and 15, as originally filed, remain in the case; Claims 16, 17, 18, and 19, newly added, remain in the case. Claims 1, 2, and 5 were previously canceled.

As described below, Applicant suggests that the foregoing amendments place the Application in condition for allowance. Further responding, as described below, Applicant suggests that the claims are not anticipated by nor made obvious by the cited prior art and are thus in condition for allowance. Applicant therefore respectfully requests reconsideration of the Application in light of the amendments and remarks presented herein, which Applicant believes satisfactorily support the allowance of all claims presented.

The following issues were raised by the Examiner and are herein addressed by Applicant:

I. Claims Rejections – 35 U.S.C. § 102

Applicant notes that 35 U.S.C. §§ 102(b) and 102(e) have been correctly quoted. The Examiner does not quote, though he relies upon, § 102(a). This section reads:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent.

The Examiner has rejected Claim 3 under 35 U.S.C. § 102(b) as anticipated by Bessette (U.S. Patent No. 6,974,584). Applicant respectfully disagrees.

Claim 3, as amended, requires that the insect repellent composition be non-insecticidal, that it be applied directly to human skin, that it consists of a blend of no more and no less than five active ingredients and one or more inactive ingredients, that each of the five active ingredients be comprised of organic agents, that each of the one or more inactive ingredients be comprised of organic agents, and that each of the five active ingredients are essential oils. Bessette '584 fails to describe each and every one of these elements.

First, Bessette '584 is a pesticidal composition. *See* Bessette '584, Col. 2, line 47; Col. 3, lines 7-8; Col. 7, line 10; Claims 1 and 2 ("A composition for killing ... lice"); Abstract. A "pesticide" is "a chemical used to kill pests, especially insects." *The Free Dictionary*, <http://www.thefreedictionary.com/pesticide>. Bessette '584 is therefore directed to an invention for killing pests. Claim 3, as amended, of the present invention is for a non-insecticidal insect repellent. A non-insecticidal insect repellent does not kill insects. *Cf. The Free Dictionary*, <http://www.thefreedictionary.com/insecticide> (An "insecticide" is "a chemical substance used to kill insects."). Bessette '584 therefore does not anticipate this material limitation of Claim 3, as amended.

Second, Bessette '584 does not require that the composition consists of a blend of no more and no less than five active ingredients. Bessette '584 discloses the use of one or more plant essential oils. *See* Bessette '584, Col. 3, line 10. It does not disclose the use of five and only five essential oils. Claims 1 and 2 of Bessette '584 moreover claim a composition having only two active ingredients, benzyl alcohol and methyl salicylate. *See* Bessette '584, Claims 1 and 2. Neither of these chemicals are essential oils.

Third, Bessette '584 does not require that each of the five active ingredients be comprised of organic agents, or that each of the five active ingredients are essential oils. As described above, the active ingredients may be non-organic chemicals.

For the foregoing reasons, Bessette '584 fails to describe each and every one of the required elements of Claim 3, as amended, of the present invention. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. Because Bessette '584

fails to describe each and every one of the required elements of Claim 3, as amended, rejection of Claim 3, as amended, under 35 U.S.C. § 102(b) on the basis of Bessette '584 is improper. Said rejection should be withdrawn.

II. Claims Rejections – 35 U.S.C. § 103(a)

Applicant notes that 35 U.S.C. § 103(a) has been correctly quoted.

The Examiner has rejected Claim 3 under 35 U.S.C. § 103(a) as being obvious over Bessette '584. Applicant respectfully disagrees.

Bessette '584 does not teach that the disclosed composition is non-insecticidal. Rather, the entirety of Bessette '584 refers to a pesticidal composition, *i.e.*, one that kills insects. Specifically, Bessette '584 is directed to a composition and method of use for killing lice. There is no motivation in Bessette '584 to use essential oils in a manner that does not kill insects.

More importantly, the material requirement of Claim 3, as amended, of the present invention that exactly five essential oils be used is completely absent from Bessette '584. Bessette '584 teaches the use of one essential oil, *see* Bessette '584, Col. 3, line 10, or more than one essential oil, *see id.*, or no essential oils, *see* Bessette, Claims 1 and 2. Nowhere in Bessette '584 would one be motivated to use five and only five essential oils. This requirement is of utmost significance. The use of essential oils, generically, for insect control does not disqualify all specific uses of same. The multiple patents cited as prior art in the Application all show various combinations of essential oils. The patent and patent applications cited by the Examiner do the same. It is therefore not simply the presence of essential oils which renders a claim obvious, but the specific composition of those essential oils. The specific composition of Claim

3, as amended, of the present invention is not made obvious by Bessette '584 any more than Bessette '584 was made obvious by the different combination of essential oils disclosed in *Watkins, et al.* (U.S. Patent No. 6,451,844) (disclosing the use of multiple repellent substances, including essential oils) or *Garrison, et al.* (U.S. Patent No. 6,355,264) (disclosing the use of one essential oil as an insect repellent) or *Beldock, et al.* (U.S. Patent Nos. 5,227,406, 5,346,922, and 5,621,013) (disclosing insect repellents containing trace amounts of essential oils).

Because nothing in Bessette '584 teaches the use of only five active ingredients, or the requirement that each of the active ingredients must be an essential oil, Bessette '584 alone does not render Claim 3, as amended, obvious. The rejection of Claim 3 under 35 U.S.C. § 103(a) over Bessette '584 should be withdrawn.

The Examiner has rejected Claims 3, 4, 6, 8-12, and 14 under 35 U.S.C. §§ 102(a) and 102(e) as anticipated by Keen (U.S. Patent Appl. 2003/0198696). Applicant respectfully disagrees.

A 35 U.S.C. §§ 102(a) rejection based on Keen '696 does not apply, as Keen '696 is not a patent but merely a patent application, and Keen '696 was not published before the invention of the present invention by the Applicant (Keen '696 was filed on Dec. 4, 2002 and published on October 23, 2003; the present Application filing date is November 24, 2003, with invention having taken place considerably prior to that date). 35 U.S.C. §§ 102(e)(1) similarly does not apply, since Keen '696 was first described in an application for patent after the date of invention of the present invention by the Applicant. Likewise, 35 U.S.C. §§ 102(e)(2) does not apply, because Keen '696 is not a patent.

The Examiner has alternatively rejected Claims 3, 4, 6, 8-12, and 14 under 35 U.S.C. § 103(a) as being obvious over Keen '696. Applicant respectfully disagrees.

Keen '696 does not teach that the disclosed composition is non-insecticidal. Rather, the entirety of Keen '696 refers to a pesticidal composition, which Keen '696 specifically defines as "an agent used to destroy a pest or kill insects". *See* Keen '696, para. 0002. There is no motivation in Keen '696 to use essential oils in a manner that does not kill insects. Yet Claims 3, 4, 6, 8-12, and 14 all require that the composition be non-insecticidal.

More importantly, the material requirements of Claims 3 and 4, as amended, and of Claims 4, 6, 8-12, and 14, which depend therefrom, that exactly five essential oils be used is completely absent from Keen '696. Keen '696 teaches the use of vegetable and fish oils, with the vegetable oils being either essentials or not essential oils. *See* Keen '696, claims 3-4. There is no indication in Keen '696 of any limit on the numbers of different types of oils that can be used. Nowhere in Keen '696 would one be motivated to use five and only five essential oils. This requirement is of utmost significance. The use of essential oils, generically, for insect control does not disqualify all specific uses of same. The multiple patents cited as prior art in the Application all show various combinations of essential oils. The patent and patent applications cited by the Examiner do the same. It is therefore not simply the presence of essential oils which renders a claim obvious, but the specific composition of those essential oils. The specific composition of Claims 3 and 4, as amended, and Claims 6, 8-12, and 14 is not made obvious by Keen '696 any more than Bessette '584 made Claim 3 obvious (see discussion above).

Because nothing in Keen '696 teaches the use of only five active ingredients, or the requirement that each of the active ingredients must be an essential oil, Keen '696 does not render Claims 3 and 4, as amended, and Claims 6, 8-12, and 14 obvious. The rejection of Claims

3 and 4, as amended, and Claims 6, 8-12, and 14 under 35 U.S.C. § 103(a) over Keen '696 should be withdrawn.

The Examiner has alternatively rejected Claims 3, 4, 6, 8-12, and 14 under 35 U.S.C. § 103(a) as being obvious over Khazan-Enache (U.S. Patent Appl. 2003/0175369) and Keen '696 in view of Bessette (U.S. Patent Appl. 2003/0194454). Applicant respectfully disagrees.

None of the cited references teach the material requirements of Claims 3 and 4, as amended, and of Claims 4, 6, 8-12, and 14, which depend therefrom, whereby exactly five essential oils are used. For the same reasons provided above, the specific composition of Claims 3 and 4, as amended, and Claims 6, 8-12, and 14 is not made obvious by Khazan-Enache '369, Keen '696, or Bessette '454. The rejection of Claims 3 and 4, as amended, and Claims 6, 8-12, and 14 under 35 U.S.C. § 103(a) over Khazan-Enache '369 and Keen '696 in view of Bessette '454 should be withdrawn.

The Examiner has rejected Claims 3, 4, and 6-15 under 35 U.S.C. § 103(a) as being unpatentable over Rolf (U.S. Patent Appl. 2004/0071757) in view of Bessette '454 and Culpepper '95. Applicant respectfully disagrees.

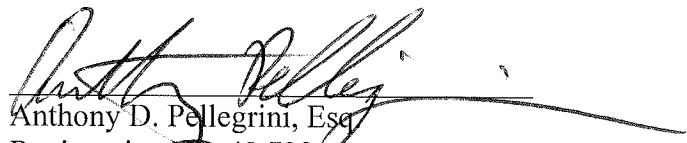
None of the cited references teach the material requirements of Claims 3 and 4, as amended, and of Claims 6-15, which depend therefrom, whereby exactly five essential oils are used. For the same reasons provided above, the specific composition of Claims 3 and 4, as amended, and Claims 6-15 is not made obvious by Rolf '757, Bessette '454, or Culpepper '95. The rejection of Claims 3 and 4, as amended, and Claims 6-15 under 35 U.S.C. § 103(a) over Rolf '757 in view of Bessette '454 and Culpepper '95 should be withdrawn.

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Conclusion

Applicant respectfully suggests that the amendment to the claims set forth herein place the claimed invention in order for allowance. Allowance of the present application therefore is in order, and is requested.

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